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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MOTOROLA INC.; SMI HOLDING LLC d/b/a SIEMENS CORPORATION; and SMITHKLINE BEECHAM CORPORATION d/b/a GLAXOSMITHKLINE, Defendants.	CIVIL ACTION NO. **COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of

the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows.

Statement of the Case

1. This is a civil action brought pursuant to Section 109(c) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609(c). The United States seeks civil penalties against the Defendants for failing to comply with the terms of a consent decree entered by this Court on June 6, 2003, in *United States of America, et al., v. Motorola Inc., et al.*, CV 91-1835-PHX-FJM.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 9609(c), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to 42 U.S.C. § 9609(c) and 28 U.S.C. § 1391(b) because the claims arose, and the violations occurred, within this district.

The Defendants

4. Defendant Motorola Inc. is a Delaware corporation with its principal place of business in Schaumburg, IL.

5. Defendant SMI Holding LLC (d/b/a Siemens Corporation) is incorporated in Delaware and its principal place of business is New York, NY.

6. Defendant SmithKline Beecham Corporation (d/b/a GlaxoSmithKline) is

incorporated in Pennsylvania, and its principal place of business is Philadelphia, PA.

7. Each of the Defendants is a "person" within the meaning of Sections 101(21) of CERCLA, 42 U.S.C. § 9601(21).

Statutory Background

8. Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provides that a potentially responsible party which is a party to a consent decree entered pursuant to Section 122, and which fails or refuses to comply with a term or condition of the decree, shall be subject to a civil penalty in accordance with Section 109(c), 42 U.S.C. § 9606(c)..

9. Section 109(c)(5) of CERCLA, 42 U.S.C. § 9609(c)(5), provides that the President may bring an action for civil penalties in an amount not to exceed $25,000 per day for each day the violation continues for any failure or refusal referred to in Section 122(l) of CERCLA, 42 U.S.C. § 9622(l). In the case of a second or subsequent failure or refusal, the amount of such penalty may be not more than $75,000 for each day that the failure or refusal continues. Pursuant to 40 C.F.R. Part 19, these penalty amounts were increased to not more than $32,500 and $97,500 per day, respectively, for violations that occur after March 15, 2004.

General Allegations

10. The Indian Bend Wash Superfund Site is approximately 13 square miles and is located in Scottsdale and Tempe, Arizona. In 1981, trichloroethylene ("TCE") was discovered in several drinking water wells owned by the City of Scottsdale (the "City").

These wells were removed from use, and as a result of the contamination, EPA added the Site to the National Priorities List in 1983. In 1984, EPA split the site administratively into a northern and a southern portion.

11. EPA, in conjunction with the City and several potentially responsible parties, completed a Remedial Investigation of the Site in 1989. Groundwater data indicated that the groundwater is contaminated with various organic solvents, including TCE, 1,1,-dichlorethylene ("1,1-DCE"), perchloroethene ("PCE"), and 1,1,1-trichloroethane ("1,1,1-TCA"). TCE is the most widespread contaminant.

12. In September 1988, EPA issued a Record of Decision ("ROD") to remediate contaminated groundwater. The ROD required the construction of a treatment plant (referred to as the "CGTF") and pumping and treating by air stripping of a number of the City's wells both to contain the plume and to provide potable water to the City. The ROD stated that once the extraction system and the CGTF were operating, EPA would consider whether additional wells or different pumping rates were necessary to contain the plume. A Consent Decree entered by this Court in 1991 implemented the ROD.

13. Following construction and initial operation of the remedy, it became apparent that the groundwater plume was moving to the north and threatening the drinking water supply of the City of Paradise Valley. To prevent contamination of Paradise Valley wells, the Defendants worked with EPA and the State of Arizona to identify and implement additional remedial measures on a voluntarily basis to achieve

capture of the plume. These measures included the installation of new extraction wells and the construction of three new treatment plants (referred to as "MRTF", "Area 7 Plant" and "Area 12 Plant").

14. In November 2000, the Defendants completed a Feasibility Study Addendum for the Site which evaluated seven alternative approaches to improve the ROD remedy. In September 2001, EPA amended the ROD to enhance the remedy by requiring the measures that the defendants had implemented voluntarily to achieve capture.

15. On June 6, 2003, this Court entered an Amended Consent Decree pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, that obligates the Defendants to continue operating and maintaining the enhanced remedy selected in the Amended ROD.

16. Under the Amended Consent Decree, groundwater that has been treated at the MRTF may not exceed specified maximum contaminant levels. Section XX.A.1 of the Amended Consent Decree provides, "during all operations of the MRTF, all Treated Groundwater shall meet . . . the cleanup levels identified in Table 3 of the Amended ROD . . . ."

17. Table 3 of the Amended ROD establishes a Maximum Contaminant Level (MCL) of 5 parts per billion (ppb) for TCE. *See* EPA Record of Decision Amendment, Indian Bend Wash Area, Table 3 (Sept. 27, 2001).

18. On or about October 15, 2007, the Defendants sampled treated groundwater discharged from Tower 2 of the MRTF. Laboratory analytical results of that sample

indicated a TCE concentration of 14 micrograms per liter (ug/l), or 14 ppb. On or about October 15, 2007, the Defendants sampled treated groundwater from the clear well located at MRTF. Laboratory analytical results of that sample indicated a TCE concentration of 9.3 ug/l, or 9.3 ppb.

19. At the time of the October 15, 2007 sampling events, MRTF Tower 2 was treating groundwater from a contaminated well identified as PCX-1. Normally, water from PCX-1 is treated using MRTF Tower 3. Tower 2 was in service between October 9, 2007 and October 17, 2007 so an inspection of Tower 3 could be performed in preparation for upcoming rehabilitation activities.

20. The Defendants sent the samples referenced above in paragraph 18 to their analytical laboratory, Transwest Geochem, for analysis on or about October 15, 2007.

21. Transwest Geochem analyzed the samples referenced above in paragraph 18 on or about October 19, 2007, four days after it received the samples. The Defendants therefore discovered that the samples exceeded cleanup levels set forth in Table 3 of the Amended ROD no later than October 19, 2007.

22. Section VII.G.13.a of the Amended Consent Decree requires the Defendants to "report any sampling results in excess of the cleanup levels set forth in Table 3 of the Amended ROD as follows: . . . orally to EPA, the State and [the Salt River Project] within 48 hours of discovery and in writing within 7 days of discovery."

23. The Defendants were required, under Section VII.G.13.a of the Amended Consent Decree, to report the October 2007 MCL exceedences to EPA and the State no later than October 21, 2007, 48 hours after the samples were analyzed. The Defendants did not notify EPA of the October 2007 MCL exceedances until November 8, 2007.

24. On November 14, 2007, the Defendants provided EPA with a written report of the circumstances surrounding the October 2007 MCL exceedances referenced above in paragraph 18.

25. In the November 14, 2007 report, the Defendants stated that, "[t]he analytical laboratory, Transwest Geochem, typically provides preliminary data within five business days of receipt of the sample. In October, however, Transwest Geochem had analytical instrument issues at their laboratory and sent the MRTF samples to their sister laboratory in another state. As such, Transwest Geochem did not issue the preliminary data report until after Tower 3 was returned to service."

26. EPA thereafter sought backup documentation, including chain of custody records, substantiating the Defendants' assertion that the samples had been sent by Transwest Geochem out-of-state for analysis.

27. Documentation provided by Defendants in response to EPA's request showed that the samples had been analyzed in Arizona by Transwest Geochem on October 19, 2007.

28. In a January 4, 2008 submission, Defendants stated that "[t]he samples [identified in paragraph 18] were transmitted to the laboratory in Phoenix and never left the custody of Transwest," the Defendants' analytical laboratory.

29. In their January 4, 2008 submission to EPA, the Defendants claimed that Arizona American Water Company ("AAWC") could not fulfill its customer demand without water from the MRTF: "During high water demand periods such as spring, summer, and fall in Arizona, shutting off flow from the MRTF clear well while waiting one or more days under a start-up plan to verify water quality could very well cause critical water shortages in the [AAWC] Paradise Valley service area."

30. AAWC wrote to EPA on January 8, 2008 and stated:

> The NIBW PC's letter stated that the AAW would experience critical water shortages should flow from the MRTF be shut off in the spring, summer, or fall under the EPA proposed "Start Up" procedures. That statement is not entirely accurate; the AAW Paradise Valley Public Water System has several sources in addition to flow from the MRTF that are used to meet system demands. The multiple sources represent redundancy in the water delivery system that work to ensure AAW will meet it's [*sic*] obligation to maintain system delivery even in events of individual source failures.

31. Section VII.G.13.a of the Amended Consent Decree requires Defendants to report any sampling results in excess of the cleanup levels set forth in Table 3 of the

Amended ROD: "The written submission shall include: (i) a description of such an event and its cause; (ii) the period of the event, including the dates and times, and, if the situation has not been corrected, the anticipated time it is expected to continue; and (iii) steps taken or planned to reduce, eliminate and prevent re-occurrence of such an event."

32. On or about January 15, 2008, the blower on MRTF Tower 3 failed. The blower failure was detected on January 16, 2008. Laboratory analysis of a sample of treated groundwater collected from the MRTF on January 16, 2008, indicated a TCE concentration of 15 ug/l or 15 ppb. Treated groundwater discharged from the MRTF to the Paradise Valley Arsenic Treatment Facility ("PVARF") was also sampled on January 16, 2008, and analytical results of that sample indicated a TCE concentration of 22 ug/l or 22 ppb.

Claim for Relief

33. The United States reasserts the allegations contained in paragraphs 10 through 32.

34. The Defendants failed to comply with the terms of the Amended Consent Decree, including but not limited to:

(a) exceeding the prescribed MCL for TCE, set forth in Section XX.A.1 of the Amended Consent Decree, in October 2007, and again in January 2008;

(b) failing to report the October 2007 MCL exceedances in a timely fashion

under Section VII.G.13.a of the Amended Consent Decree;

(c) failing to comply with Section VII.G.13.a of the Amended Consent Decree when they reported in their November 14, 2007 report, that the samples had been sent out-of-state for analysis, and when they stated in their January 4, 2008 report, that AAWC could not meet its customer demand without water from the MRTF.

35. The Defendants are liable, under Sections 122(l) and 109(c)(5) of CERCLA, for a civil penalty of up to $32,500 per day, for each day that a violation continues, and up to $97,500 per day, for each day of a second or subsequent violation.

PRAYER FOR RELIEF

Wherefore, the Plaintiff, the United States of America, respectfully requests that the Court assess civil penalties against the Defendants up to the amounts allowed under CERCLA and award the United States such other relief as this Court deems just and proper.

9 May 2008
Date

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5/19/08

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